

IN THE COURT OF APPEALS OF IOWA

No. 3-1166 / 13-0503
Filed January 9, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL TODD MCKINNON,
Defendant-Appellant.

Appeal from the Iowa District Court for Crawford County, Jeffrey L. Poulson, Judge.

A defendant appeals his sentence following his conviction for theft in the first degree. **AFFIRMED.**

F. Montgomery Brown of Brown & Scott, P.L.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, Adam Kenworthy, Student Legal Intern, and Michael Mundt, County Attorney.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

TABOR, J.

Michael Todd McKinnon, the former Denison fire chief, appeals his prison sentence following a plea of guilty to theft in the first degree. McKinnon argues the district court failed to consider a suspended sentence, failed to state reasons for not imposing a suspended sentence, and failed to consider if a suspended sentence advanced the statutory sentencing goals.

The record shows the district court *did* consider the possibility of a suspended sentence. The court gave adequate reasons for imposing a prison sentence and did not abuse its discretion. Therefore, we affirm.

I. Background Facts and Proceedings

State auditors determined that from July 1, 2005, until early 2010, Michael Todd McKinnon used his position as chief of the City of Denison Fire Department and his position with the Crawford County Emergency Medical Services (EMS) Association to make improper purchases, disbursements, payments, and reimbursements.¹ McKinnon initially denied responsibility, but eventually admitted to the misconduct. The City of Denison lost \$72,794.80 due to McKinnon's thefts. The EMS Association lost \$23,101.21.²

On January 11, 2012, the State filed a trial information, charging McKinnon with theft in the first degree in violation of Iowa Code sections 714.1(1), (2), and (4) (2011) and felonious misconduct in office in violation of Iowa Code sections 721.1(1), (2) and (3). He entered a plea agreement with the

¹ McKinnon resigned his position as chief in January 2010 and moved to Aztec, New Mexico to become an instructor at San Juan College.

² Before sentencing, McKinnon repaid \$14,634.00 to the EMS Association.

State in which he agreed to plead guilty to first-degree theft in exchange for the dismissal of the felonious misconduct charge. He formally entered his guilty plea on January 7, 2013, and the court ordered a pre-sentence investigation report. At the sentencing hearing on March 25, 2013, the State argued for imprisonment, while McKinnon asked for a deferred judgment or, in the alternative, a suspended sentence. The court sentenced him to an indeterminate ten-year term of imprisonment. McKinnon now appeals that sentence.

II. Scope and Standard of Review

We review sentencing decisions for correction of errors at law; sometimes we must determine whether legal error occurred because the district court abused its discretion. *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006).

III. Analysis

McKinnon argues the district court abused its discretion when it sentenced him to incarceration rather than imposing a suspended prison term. A court's sentencing decision carries a strong presumption in its favor. *State v. Sumpter*, 438 N.W.2d 6, 10 (Iowa 1989). We interfere with a sentencing order only when the defendant has met the heavy burden of proving affirmatively that the trial court abused its discretion. *State v. Stanley*, 344 N.W.2d 564, 567-69 (Iowa Ct. App. 1983). We find an abuse only if the district court's discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Zaruba*, 306 N.W.2d 772, 774 (Iowa 1981).

McKinnon contends the district court erred in overlooking the option of a suspended sentence, and instead weighing only the extreme of a deferred

judgment against incarceration. Contrary to McKinnon's contention, the district court did not view its only choices as a deferred judgment or imprisonment. The court considered a suspended sentence and found it would not be appropriate.

After listening to the defense request for a deferred judgment and McKinnon's allocution where he asked for leniency so that he could keep his job and pay restitution, the district court reasoned:

It's a big sell to argue incarceration on one side for a very massive theft and to argue for a deferred judgment. And if I suspend sentence, he's going to lose his job. And the only reason to go that route is considering the restitution, and if he loses his job, he loses that either way.

The court recognized it had the discretion to suspend McKinnon's sentence, but was not required to do so. See Iowa Code § 907.3(3) ("By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require."). The court offered a logical explanation for rejecting a suspended sentence, finding while more lenient than prison, it would not achieve the goal of preserving McKinnon's ability to work and pay restitution.

But even if the court had not offered its rationale for rejecting a suspended sentence, we would not find error under Iowa Rule of Criminal Procedure 2.23(3)(d). That rule requires the court to give its reason for selecting a particular sentence. See Iowa R. Crim. P. 2.23(3)(d). It does not require the court to give its reason for declining a particular sentencing option. *Id.*; see *State v. Ayers*, 590 N.W.2d 25, 28 (Iowa 1999).

The court justified its sentencing decision as follows:

The reasons supporting this judgment of incarceration include protection of the community from further offenses by public officials. You did betray the public's trust. I'm sympathetic to your admissions here today that you're concerned about your family and your job, but there's a breach of trust here, and a deferred judgment doesn't fit the circumstances in this case.

The court also emphasized the serious nature of the offense: the large amount of money involved, the long period of time that McKinnon engaged in the thefts, and the intimidation he undertook to thwart the investigation. The sentencing court complied with rule 2.23(3)(d).

Finally, the district court did not violate Iowa Code sections 901.5 or 907.5 in denying McKinnon's request for probation. The court took into account the defendant's personal situation, but gave greater weight to his betrayal of his official position. It was not unreasonable for the sentencing court to impose a prison term to "deter other officials from committing offenses" and to punish McKinnon's serious breach of the public trust. See *State v. Morrison*, 323 N.W.2d 254, 257 (Iowa 1982). We find no cause to disturb McKinnon's sentence.

AFFIRMED.